

ZONING BOARD OF APPEALS

The hearing on Tuesday, December 3, 2024, is called to order by Chairman Kwiek at 7:02 pm.

Members Present:	John Jimenez Greg Kalinowski Shawn Pralow Harry Kwiek Ron Carey	Absent:	Robert Schafer, Alternate Jim Lembke, Alternate Phyllis Todoro, Town Atty Ray Balcerzak, Building Inspector
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Appeals Case #1469 for Todd Huber of 60 Old Pound Road, Elma, NY who is requesting an area variance to build a front porch with less than the required front yard setback §149-9, §144-78 D, C-1.

Mr. Kwiek asked Mr. Huber for a definition of property.

Mr. Huber's response: The property defaulted in 2000 as two properties. The problem was that the property line went through the existing building. The two properties should have been adjoined but were not. No one wanted to update, they would not get a clean title. Had accrued somewhere in the amount of \$300,000 in back taxes. Mr. Huber bought Seneca Street side in a public auction in 2000. Even though it had this dispute. 2024 they purchased the other parcel. The pictures of the properties were shown on a screen to give more detail. Mr. Huber described the pictures; they showed the condition and what is being done on the properties. He is cleaning up properties, rebuilding, already excavating the stoop that existed on the corner front of Seneca Street, etc. He asked to use the same 40' to rebuild the front porch, the furthest point of the new is 40' as well.

Mr. Kwiek asked if the corner of the front porch would be the same dimension. Mr. Huber responded the porch would be the same existing dimension. Trying to repair the front wall of the basement, he had to remove it. Mr. Kwiek said it needs to be marked as a "former location" on the plans.

Mr. Kalinowski believes the project is aggressive. Either way, the improvements would be favored by the residents. This is done with no serious issues, it is simple and straightforward.

Mr. Pralow questioned if the width of the house was to match, not expanding. Mr. Huber said no to expanding. Responded no greater width to the house, no infringement to the south of the neighbor's properties. The objective was to have a covered entrance to enter the house.

Mr. Jimenez asked about 30' footage from the road, new survey 40'. Mr. Huber knows since getting the survey showed 37' from the corner.

Mr. Jimenez mentioned on the application he stated 30', only 10' variance is asked for. Mr. Huber answered it was an estimate.

Mr. Carey and Mr. Jimenez discussed plans/survey with Mr. Huber and asked if all agreed it is approximately 40' Mr. Balcerzak added it is 40.8'.

No one spoke for or against the variance.

Mr. Jimenez made the motion for Appeals Case #1469 for Todd Huber of 60 Old Pound Road, Elma, NY who is requesting an area variance to build a front porch near completion with less than the required front yard setback §149-9, §144-78 D, C-1 approved.

1. A desirable change would be known to be to be constructed 40' less than 50' from the road. No detriment to nearby homes
2. The benefit achieved less than required only by code can be achieved by another means.
3. The request is not significant. Asking for a 20% variance of approximately 10'. Only will be 40 'not the required 50'.
4. The request would have no adverse physical or environmental impact on the neighborhood. The porch is an enhancement. Hardship self-created since the porch has already been removed.
5. The alleged is self-created.

Seconded by: Mr. Carey. Yes: 5. Nays: 0.

Appeals Case # 1470 for Joseph Canaski of 2481 Bullis Road, Elma, NY requesting an area variance to build a front deck with less than the required front yard setback from June Road due to being a corner lot §144-98 C4, Residential B.

Mr. Kwiek asked for the history on the property, and how he got to need this request. Mr. Canaski explained that the property is on Bullis Road, and the garage side is on Bullis Road. Build an elevated walkway (deck) from the driveway to the front of the house.

Mr. Kwiek asked if it would be off the ground. Mr. Canaski replied: Yes, three steps in height. Mr. Kwiek asked if the front steps faced Bullis and if it was coming around the side of the building. Mr. Canaski replied that the front faces Bullis Rd. and the remaining structure on the June Road's side needs approval and the variance.

Mr. Jimenez asked if the front walk would be removed. Mr. Canaski replied that a 4' x 4' concrete pad walkway with bushes was removed, and he would like something besides a plain sidewalk.

Mr. Jimenez asked if a path was attached to the home. Mr. Canaski replied yes, it would stick out 6' on June Road to the elevated deck.

Mr. Jimenez said it would be 8' sticking out on the Bullis Rd side, questioned if it is aesthetically appealing; confirming if the structure would be a raised deck, no covering, with just a path.

Mr. Canaski added that the railing would be put there with no spindles, it would be vertical slats, bottom to waist high.

Mr. Jimenez stated the variance would 26' instead of 50'.

Mr. Kwiek asked if June Rd. was on the west side of the property.

Mr. Carey had no further questions

Mr. Kalinowski asked what the means of support was. Concrete? Mr. Canaski replied: 4'x 4' wood post.

Mr. Pralow stated it appears that June Road 50' did not meet the setback when originally built. Mr. Canaski replied it was 43', he believed.

No one spoke for or against the variance.

Mr. Pralow made the motion for Appeals Case # 1470 for Joseph Canaski of 2481 Bullis Road, Elma, NY requesting an area variance to build a front deck with less than the required front yard setback from June Road due to being a corner lot §144-98 C4, Residential B to approve with:

1. A desirable change would be known. The additional 6' would not block the view or cause safety issues. Will not block any traffic on June Rd. Not change the look or be detrimental to nearby properties.
2. The benefit could not be achieved another way.
3. The request is not substantial. It was already moved with a previous addition. On a quiet road.
4. The request would have no adverse physical or environmental effect. It is just the addition of a deck and post.
5. The alleged difficulty is self-created, but he wants to put on a deck and no other way around it.

Seconded by: Mr. Kalinowski. Yes: 5. Nays: 0.

Appeals Case # 1471 for Andrew Wolf and Mathew Ertel of 8351 Clinton Street, Elma, NY who is requesting an area variance to build an addition to the front of the commercial building with less than the required front yard setback §144-78 D, §144-76A, §144-76 F, C-1.

Mr. Kwiek asked if their business was growing and if additional space was needed in a warehouse. Mr. Wolf and Mr. Ertel replied yes

Mr. Kwiek said after looking at what they wanted to do, if expansion was toward Clinton and if there were any other areas to expand either northbound or west side (septic location).

Mr. Wolf and Mr. Ertel replied that the north side does not have enough space and that the west side is at a drop-off.

Mr. Kwik asked if the back of the property was full. Mr. Wolf and Mr. Ertel replied They had a concern the fire code was 30' between the metal and the existing bldg., which is not feasible.

Mr. Kwiek asked Mr. Balcerzak his opinion, his reply was it would be costly to build cinderblock walls for fire separation and square footage.

Mr. Kwiek asked if the back of the building on Clinton St was occupied. Mr. Wolf and Mr. Ertel replied it was a rental to a furniture repair shop.

Mr. Kwiek asked if the repair shop is using 1/3 of their building. Mr. Andrew Wolf and Mr. Mathew Ertel replied Yes.

Mr. Jimenez asked if the additional building be attached to the existing building. Mr. Wolf and Mr. Ertel replied yes. Mr. Balcerzak said building codes would be fine.

Mr. Jimenez asked if cutting into a parking lot or storage with other buildings for deliveries and additional material. Percentage of material and inventory? How did 3000 SF dimensions come about and what is the purpose of it? Mr. Andrew Wolf and Mr. Mathew Ertel: We have material and business growing need more space.

Mr. Jimenez: Currently at limit SF and asking to add another 3000 SF is a lot. Are they looking into other sites for storage that are not on this property? Mr. Wolf and Mr. Ertel replied no we have not.

Mr. Jimenez understands hardship with the septic in the back and area that is graded unfavorably. Mr. Jimenez asked if they would ask for more in the future. Answer: no

Mr. Pralow asked type of business. Mr. Andrew Wolf and Mr. Mathew Ertel replied it is a souvenir company that provides across the country. Import keyrings, magnets, etc.

Mr. Pralow asked what material they use. Mr. Wolf and Mr. Ertel replied that it is laser engraving on wood (90%) and plastic.

Mr. Pralow asked if the percentage of inventory was brought in by truck. Mr. Andrew Wolf and Mr. Mathew Ertel: Yes, a semi-delivery, the current parking lot is large enough, that is why the west side would not work, and they need to use a forklift for deliveries

Mr. Kalinowski: The building was talked about because of variance size. According to the code, it is allowed to increase by 50% but no larger than 4500 SF, already at 6500 SF and looking for another 3000 SF which would be more than doubled what is allowed. Other projects like this did not go well, tests that were supported for supporting or denying similar requests. Benefits must outweigh. Esthetics, SF is not close to what is asked for vs. what is allowed by code. The Board asked if they thought of going vertical in the building.

Mr. Andrew Wolf and Mr. Mathew Ertel replied no, that would not work with racks, storage, or forklifts.

Mr. Kalinowski stated there was an issue with the size and asked if they were getting new machinery. Mr. Andrew Wolf and Mr. Mathew Ertel replied yes.

Mr. Kalinowski explained that the variance is for both the size and the location of the new building. The bigger issue is the size.

Mr. Jimenez asked how the shipping area was and if there was parking for employees or the public. Also, if they would be bringing in tractor-trailers for delivery/shipment, and if there is adequate space? Does not want to create a safety issue for others in the area.

Mr. Andrew Wolf and Mr. Mathew Ertel: Five cars park there, and Clinton has plenty of space to use for shipping. There is a good amount of space on Clinton St where trucks could enter.

Mr. Kalinowski asked if the building could be resized instead of a 40' x 75' square box, making it more conducive for needs. Mr. Andrew Wolf and Mr. Mathew Ertel asked if it would be better if it was offset toward the west, so it has more architectural interest.

Mr. Kalinowski asked if the cutback on SW corner could be a dock for shipping and handling. Mr. Andrew Wolf and Mr. Mathew Ertel: Okay if smaller but 40' is important to them.

Mr. Kwiek: regarding the application, set back – §144-78 D. Safety is a concern when people are coming from the side street into Clinton. (westbound).

Mr. Kwiek hopes they would consider the expansion away from the road and get smaller. Going away from Clinton Street would be something to consider. Mr. Andrew Wolf and Mr. Mathew Ertel: Good for growth of business, would consider going smaller away from Clinton Street.

Mr. Carey asked under the proposed sketch, a new building from Clinton Street

Mr. Andrew Wolf and Mr. Mathew Ertel: Right-away asking for an additional 12' now asking for 38'. Mr. Balcerzak interjected it is specifically 37.98".

Mr. Carey believes it is a problem being at a busy intersection. As other members said, it is already at 7000 SF. Around 2008, the town adopted a comprehensive plan which included more commercial planning. Clinton Street and Townline Rd (commercial 1) most restrictive in terms of commercial. Called "Neighborhood Commercial" 3000 SF Max 50% expansion equaling 4500 SF, since they are already at 7000 SF, asking to put another 3000 SF on the lot, is a big ask. Must take into consideration the neighborhood and safety concerns.

Sect 147.71 Commercial meets the daily needs of adjacent residential neighborhoods without disturbing the character of the surrounding residential area. Asked what their business does to meet the needs of the surrounding area, examples would be a doctor's office, grocery or retail store, or hair salon. Answer by Mr. Andrew Wolf and Mr. Mathew Ertel: It does not.

Mr. Carey asked if they looked at any other properties. Commercial 2 or 3 zones.

Mr. Andrew Wolf and Mr. Mathew Ertel replied they bought this property 3 years ago. And that an attachment to the current building is easier and better.

Mr. Carey stated he believes the neighborhood is 90-95% residential – adding 3000SF does not fit into what is classified as a neighborhood commercial. Must consider zoning law hardship. What is the hardship?

Mr. Andrew Wolf and Mr. Mathew Ertel replied they would have to purchase or rent other property.

Mr. Carey explains expense is not a hardship, may be a business expense. Does not qualify this case as a hardship. The only hardship would be the lay of the land, something that would prevent a building on that land. Asked to show a picture of what their idea is and where the drop is. Discuss with the builder about building at drop off. 2000 SF could not be approved, still too large. They could look into commercial (3) property elsewhere.

Mr. Andrew Wolf and Mr. Mathew Ertel will ask the builder about the section with drop-off. Asked if they can get a continuance and come back in 30 days with new plans.

Mr. Kwiek said that a continuance does not mean approval. Suggestions made tonight do not imply that there will be approval for those ideas.

Mr. Carey discussed how another company asked for a similar variance recently and they were denied. A comprehensive plan was developed by the Town Board with input from the residents, protecting what was established. Suggested they look with realtor for different properties to fit needs.

Mr. Pralow said the size of the dock door at Townline not Clinton would be more appealing.

No one spoke for or against the variance.

Mr. Carey motioned a continuance with re-consideration of a new design and/or new location. The size issue needs to be close to 10,000 SF, so the new plan would have to consider the size limits. The secondary issue is the front setback; if that could be relocated, that would be a help, too.

Seconded by Mr. Jimenez Yes: 3. Nays: 2 Mr. Kwiek and Mr. Kalinowski

Mr. Carey made the motion for Appeals Case # 1471 for Andrew Wolf and Mathew Ertel of 8351 Clinton Street, Elma, NY who are requesting an area variance to build an addition to the front of the commercial building with less than the required front yard setback §144-78 D, §144-76A, §144-76 F, C-1 approved to have a continuance (30 days) with a new design or location, size issue up to 10000 sf, the new plan needed to take it into account the size.

Mr. Jimenez made the motion to approve the minutes from October 2024 and November 2024.

Seconded by: Mr. Carey. Yes: 5. Nays: 0.

Mr. Jimenez made the motion at 8:04 to end the meeting. Seconded by Mr. Carey.
Yes: 5. Nays: 0.

Respectfully Submitted,


Christine Zeitler
Zoning Board Secretary